

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

BID FOR POSITION, LLC,

Plaintiff,

v.

AOL, LLC, GOGGLE INC., MICROSOFT
CORP., and MIVA, INC.,

Defendants.

CASE NO. 2:07-cv-582 JBF/TEM

Jury Trial Demanded

DEFENDANTS' NOTICE PURSUANT TO 35 U.S.C. § 282

Defendants AOL LLC and Google Inc. ("Defendants"), hereby give written notice pursuant to 35 U.S.C. § 282 that it may rely upon one or more of the patents and publications listed below as anticipating or showing the state of the art with respect to United States Patent No. 7,225,151 (the "'151 patent"). Defendants are also providing written notice of the name and last known addresses of persons who may be relied upon as the prior inventor of or having prior knowledge of or as having previously used or offered for sale the invention of the '151 Patent.

A. PATENTS AND PUBLICATIONS

1. United States Patent No. 6,269,361, System and Method for Influencing a Position on a Search Result List Generated by a Computer Network Search Engine, issued July 31, 1001, Inventors: Davis et al.
2. United States Patent No. 7,177,832, System and Method for Performing a Progressive Second Price Auction Technique, issued February 13, 2007, Inventors: Semret et al.
3. United States Patent No. 5,835,896, Method and System for Processing and Transmitting Electronic Auction Information, issued November 10, 1998, Inventors: Fisher et al.
4. United States Patent No. 6,243,691, Method and System for Processing and Transmitting Electronic Auction Information, issued June 5, 2001 Inventors: Fisher et al.
5. United States Patent Application Publication No. 2003/0236739, Bid Positioning System, published December 25, 2003, Inventors: Borgeson et al.

6. World International Patent Organization Application Publication No. WO 00/57333, A Method of Realtime Allocation of Ad Space on a Web Page Based on Bidding Protocol published September 28, 2000, Inventors: Denison W. Bollay
7. United States Patent No. 6,907,405, Computer Controlled Priority Right Auctioning System, issued June 14, 2005, Inventors: Kenton F. Brett
8. United States Patent No. 5,905,975, Computer Implemented Methods and Apparatus for Auctions, issued May 18, 1999, Inventors: Lawrence M. Ausubel
9. United States Patent No. 5,974,398, Method and Apparatus Enabling Valuation of User Access of Advertising Carried by Interactive Information and Entertainment Services, issued October 26, 1999, Inventors: Hanson et al.
10. United States Patent No. 6,078,866, Internet Site Searching and Listing Service Based on Monetary Ranking of Site Listing, issued June 20, 2000, Inventors: Buck et al.
11. Snyder & Hanes, The Auction Book, 1999 Guide to Online Auctions, Vol. II (GWB Publishing, Cincinnati, OH, 1999) (GOOGB000000102-288)
12. Prince, Auction This! Your Complete Guide to the World of Online Auctions, Prima Publishing, Rocklin, CA 1999 (GOOGB00000577-939)
13. Symonds, "The Net Imperative," *The Economist*, June 26- July 2, 1999 (GOOGB00011100-10)
14. Roth & Ockenfels, "Last Minute Bidding and the Rules for Ending Second-Price Auctions: Evidence from eBay and Amazon Auctions on the Internet," *American Economic Review*, Volume 92, No. 4, September 2002, 1093-1103 (GOOGB00008869-79)
15. McMillan, Reinventing the Bazaar (W.W. Norton & Company 2002) pp. 63-74 (GOOGB00009464-75)
16. Huhns and Vidal, "Online Auctions," *IEEE Computing*, May-June 1999 (GOOGB00004061-63)
17. Sullivan, "GoTo Going Strong," *Search Engine Watch*, July 1, 1998, available at <http://searchenginewatch.com/ShowPage.html?page=2166331> (GOOGB00011703-06)
18. Antebellum Covers, available at <http://web.archive.org/web/19961028110406/www.antebellumcovers.com/sale128.htm> (GOOGB00004027-51)
19. Sullivan, Danny, "GoTo Sells Positions," *Search Engine Watch*, March 3, 1998, available at <http://searchenginewatch.com/showPage.html?page=2165971> (GOOGB00011096-99)
20. Sullivan, Danny, "GoTo Revamping Customer Service After Dispute," *Search Engine Watch*, January 1, 1999, available at <http://searchenginewatch.com/showPage.html?page=2166841> (GOOGB00011093-95)

21. "Getting Started With OpenSite," *OpenSite*, February 9, 1999, available at <http://web.archive.org/web/19990209005155/opensite.com/gettingstarted/index.html> (GOOGB00011091-92)
22. Cox, Beth, "OpenSite Technologies Delivers Auction 4.0." February 12, 1999 (GOOGB00011121-23)
23. "OpenSite Auction - Software For Auctioning on the Internet," December 5, 1998, available at <http://web.archive.org/web/19981205194514/opensite.com/products/index.html> (GOOGB00011119-20)
24. "OpenSite Auction Corporate Combines Web Auctioning With the Power of Oracle and DBMS," *OpenSite*, available at <http://web.archive.org/web/19990128132933/www.opensite.com/products/software/corporate.html> (GOOGB00011111-18)
25. Cox, Beth, "Auction.com Launches an Instant Buy Service," Mar. 23, 1999, available at <http://www.clickz.com/showPage.html?page=84331> (GOOGB00011090)
26. S-1 SEC Filing, filed by OpenSite Technologies, Inc. May 28, 1999, available at <http://sec.edgar-online.com/1999/05/28/16/0000950144-99-006879/Section11.asp> (GOOGB00011124-44)
27. Symonds, "The Impact of the Internet on Business," *The Economist*, June 26, 1999, available at <http://crab.rutgers.edu/~goertzel/economistnetbusiness.htm> (GOOGB00011100-10)
28. Zeff, Robbin Brad Aronson, *Advertising on the Internet*, John Wiley & Sons, 1999 (GOOGB00011145-588)
29. "Auction.com Boosts Revenue with Enhanced Ad Auction Format; Morning and Afternoon Auctions and..." *Business Wire*, May 4, 1998 (GOOGB00011087-89)
30. Andreozzi, Lori, "Clicking for AdSpace," *Signshop Network*, available at <http://www.signshop.com/picks/ClickingAd.html>, June 9th, 2008 (GOOGB00011607-08)
31. Gibney, "Market-Based Call Routing in Telecommunications networks using Adaptive Pricing and Real Bidding," *Proceedings of the 1999 Conference on Intelligent Agents for Telecommunications Applications*, Stockholm, Sweden, August 1999 (GOOGB00009361-76)
32. Maes, et al., "Agents that Buy and Sell: Transforming Commerce as We Know It," *Communications of the ACM*, March 1999, pp. 4-9 (GOOGB00011616-27)
33. McAfee and McMillan, "Auctions and Bidding," *Journal of Economic Literature*, American Economic Association, vol. 25(2), June 1987, pp. 699-738 (GOOGB00002141-81)
34. Nisan, et al., "Globally Distributed Computation over the Internet - The POPCORN Project," *ICDS '98: Proceedings of the 18th International Conference on Distributed Computing Systems*, 1998, IEEE Computer Society (GOOGB00009476-90)

35. Parkes, et al., "Accounting for Cognitive Costs in On-Line Auction Design," In Agent Mediated Electronic Commerce (LNAI 1571), P. Noriega and C. Sierra (eds.), Springer-Verlag, 1999, pp.25-40 (GOOGB00009491-506)
36. Vickrey, "Counterspeculation, Auctions, And Competitive Sealed Tenders," *Journal of Finance* (1961) (GOOGB00009507-37)
37. Waldspurger, et al., "Spawn: A Distributed Computational Economy," *IEEE Transactions on Software Engineering*, February 1992 (GOOGB00009358-69)
38. Wurman, et al., "The Michigan Internet AuctionBot: A Configurable Auction Server for Human and Software Agents," *Proceeding of the Second Int'l Conference on Autonomous Agents*, Minneapolis, MN, May 1998, pages 1-8 (GOOGB00008880-7)
39. Back and Zender, "Auctions of Divisible Goods: On the Rationale for the Treasury Experiment," *Review of Financial Studies*, 1993, vol. 6, issue 4, pp. 733-64 (GOOGB00009282-314)
40. Bulow and Klemperer, "Auctions versus Negotiations," *American Economic Review*, vol. 86, no. 1, March 1996, pp. 180-194 (GOOGB00009315-36)
41. Chavez, et al., "A Real-Life Experiment in Creating an Agent marketplace," *Proceedings of the Second Int'l Conference on the Practical Application of Intelligent Agents and Multi-Agent Technology (PAAM'97)*, London, UK, April 1997 (GOOGB00009337-56)
42. Woerner, et al., *ebay for Dummies*, IDB Books Worldwide Inc., Foster City, CA, 1999, p.121 (GOOGB00008888-9272)
43. Chavez and Maes, "Kasbah: An Agent marketplace for Buying and Selling Goods," *In Proceedings of the First Int'l Conference on the Practical Application of Intelligent Agents and Multi-Agent Technology*, London, UK, April 1996 (GOOGB00009570-83)
44. Guttman, et al., "Agent-mediated Electronic Commerce: A Survey," *The Knowledge Engineering Review*, vol. 13, issue 2, July 1998, pp. 147-159 (GOOGB00009584-93)
45. U.S. Patent No. 5,826,244 , Method and System for Providing a Document Service Over a Computer Network Using an Automated Brokered Auction, October 20, 1998, Inventors: Bernardo A. Huberman
46. Parkes, et al., "Accounting for Cognitive Costs in On-Line Auction Design," *Agent Mediated Electronic Commerce* (LNAI 1571), P Noriega and C Sierra (eds.), Springer-Verlag, 1999 (GOOGB00009491-9506)
47. Krishna and Perry, "Efficient Mechanism Design" (1998) (GOOGB00002850-72)
48. Varian, "Economic Mechanism Design for Computerized Agents" (2000) (GOOGB00002894-906)
49. Cooper, *Under the Hammer: The Auctions and Auctioneers of London* 28 (Constable, London 1977) (GOOGB00009357-60)

50. Lucking-Reily, *Vickrey Auctions in Practice: From Nineteenth Century Philately to Twenty-first Century E-commerce*, 14 *Journal of Economic Perspectives* 3: 183-192 (Summer 2000) (GOOGB00004125-42)
51. Varian, "Economic Mechanism Design for Computerized Agents," Proceedings of the First USENIX Workshop on Electronic Commerce, New York, NY, July 1995 (GOOGB00002506-18)
52. GoTo.com Announces First Round of Financing Totaling More than \$6 Million, Led by Draper Fisher Jurvetson," 5/18/98 Press Release (GOOGB00012258-60)
53. AdAuction.com,
54. eBay, <http://web.archive.org/web/19990224033758/pages.ebay.com/aw/proxy-bidding.html>, 1999 (GOOGB00009276-77)
55. uBid.com
56. Bid.com
57. Yahoo!, <http://web.archive.org/web/19990424120445/auctions.yahoo.com/>, 1999
58. auctions.amazon.com
59. GoTo.com, <http://web.archive.org/web/19980626031757/http://www.goto.com>, 1998
60. www.toyauction.com/beanies
61. www.autografs.com
62. SearchUp.com
63. OnSale.com, <http://web.archive.org/web/19990125091252/http://onsale.com/>, 1999 (GOOGB00009275)
64. AltaVista.com
65. United States Patent No. 6,606,608, Method and System for Providing a Discount at an Auction, issued August 12, 2003, Inventors: Bezos et al.

Defendants also incorporate herein all patents and publications previously disclosed to Plaintiff during this litigation, including in AOL's Initial Disclosures, Google's Fourth Supplemental Initial Disclosures, AOL's Response to Bid for Position's First Set of Interrogatories (particularly Interrogatory Nos. 6-12), Google's Response to Bid for Position's First Set of Interrogatories (particularly Interrogatory Nos. 6-12), AOL's Response to Bid for

Position's Second Set of Interrogatories (particularly Interrogatory No. 16), Google's Response to Bid for Position's Second Set of Interrogatories (particularly Interrogatory No. 16), the Expert Report of Dr. David C. Parkes Regarding Invalidity of U.S. Patent No. 7,225,151, the Expert Report of Dr. Paul Milgrom Regarding Invalidity of U.S. Patent No. 7,225,151, the Reply Expert Report of Dr. David C. Parkes Regarding Invalidity of U.S. Patent No. 7,225,151, and the Reply Expert Report of Dr. Paul Milgrom Regarding Invalidity of U.S. Patent No. 7,225,151.

B. PERSONS WHO MAY BE RELIED UPON AS THE PRIOR INVENTOR OR AS HAVING PRIOR KNOWLEDGE OF OR AS HAVING PREVIOUSLY USED OR OFFERED FOR SALE THE INVENTION OF THE PATENT IN SUIT

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Defendants also incorporate herein all potential prior art witnesses previously disclosed to Plaintiff during this litigation, including in AOL's Initial Disclosures and Google's Fourth Supplemental Initial Disclosures.

Dated: August 8, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2008, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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